IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

CRP.No. 1008 of 2000(C)

AGAINST THE ORDER DATED / / IN AA 87/89 IN AA.136/1999 of APPELLATE AUTHORITY, KANNUR
.....

REVN. PETITIONER: (IST RESPONDENT)

KAPPAL VALAPPIL CHANGAN,
MATHUR, ATHALUR P.O., THAVANOOR TIRUR.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS: (APPELLANT AND 2ND RESPONDENT)
----

1. **KALARIKKAL VALAPPIL KOMAN, S/O. CHEMBI, MATHUR P.O., MATHUR, THAVANOOR.**

2. **N.DEVAKI AMMA, 18/103, PAKKIKKARA STREET, METTUPALAYAM , COIMBATORE.**

BY ADV. SRI.K.RAMACHANDRAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, ALONG WITH CRP NO. 1009 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP. NO.1008/2000

ORDER ON CMP. NO.2085/2000 IN CRP. NO.1008/2000

DISMISSED

29.10.2007 **SD/- M.N.KRISHNAN, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

C.R.P. NOs. 1008 & 1009 OF 2000

= = = = = = = = = = = = = = =

Dated this the 29th day of October, 2007.

O R D E R

CRP 1008/00 is filed against the order of the Appellate Authority(Land Reforms) Kannur in A.A.136/97 which was an application filed by the present revision petitioner for rehearing since the petitioner and counsel were absent, that was dismissed for default. CRP 1009/00 is preferred against the order of the Appellate Authority in I.A.308/99 in A.A.136/97. A perusal of the said order would reveal that the Appellate Authority disposed of the matter on the ground that the present revision petitioner issued two registered letters stating that he is not at all interested to contest the present appeal and therefore the Court can take any decision on the appeal petition. Curiously enough the Appellate Authority on that ground allowed the appeal and disposed of the matter. Before the Appellate Authority the first respondent in the revision petition is the appellant, the present revision petitioner is the first respondent and the 2nd respondent is the superior landlord. Actually the point of dispute is now

between the present revision petitioner and the first respondent. They are having rival claims over the property and who is entitled to the fixity of tenure is a question to be considered and decided.

2. I am informed in both these properties have been issued certificate of purchase as well. Even if a party does not appear before Court, that shall not be a ground for allowing the appeal unless the Court is satisfied that the appellant has made out a case so as to get a verdict in his favour. Therefore, the order under challenge in CRP 1008/00 suffers from serious infirmity and therefore it is set aside. The Appellate Authority should have at least attempted to hear and dispose of the matter when an application for rehearing was presented before it. It was not done and it may not be proper for this Court sitting in revision to re-appraise the facts which the first appellate Court has not taken care to do. Therefore, necessarily the orders under challenge have to be set aside and the matter has to be remitted back to the Appellate Court for fresh consideration.

In the result, both the CRPs are allowed. The orders under challenge are set aside and the Appellate Authority is directed to consider A.A.136/97 strictly in accordance with law after hearing both sides. I direct the Appellate Authority to fix a date for appearance and inform the parties by notice so that they can appear before the Court to context the case.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-

M.N. KRISHNAN, J.

= = = = = = = = = = =

C.R.P. No. 1008 OF 2000

= = = = = = = = = = = =

O R D E R

29th October, 2007.